

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CARMELITA M. DESIDERIO,  
Personal Representative of the  
Estate of PHILLIP R. CURLEY, deceased,

Plaintiff,

v.

No. 1:23-cv-00057-SCY-KRS

UNITED STATES OF AMERICA;  
JANELLE D. JONES, M.D.; and  
JOY G. HARRISON, M.D.,

Defendants.

**ORDER TO SHOW CAUSE**

THIS MATTER is before the Court *sua sponte* and upon review of the docket. On June 20, 2023, the Court entered an Order Granting in Part Plaintiff's Renewed Motion Authorizing Service by Publication. (Doc. 23). The Court thereby authorized service by publication on Defendant Joy G. Harrison, M.D., and extended the time for service under Fed. R. Civ. P. 4(m) by four weeks from the date of the Court's Order. Those four weeks have passed and the record does not show that Plaintiff has taken any further steps as to Defendant Harrison.

“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Additionally, Rule 41(b) of the Federal Rules of Civil Procedure authorizes the Court to dismiss an action *sua sponte* for failure to prosecute. *See also Martinez v. IRS*, 744 F.2d 71, 73 (10th Cir. 1984) (holding that courts may impose sanctions for a plaintiff’s failure to prosecute based on courts’ inherent power to regulate their dockets and promote judicial efficiency); *Link v.*

*Wabash R.R. Co.*, 370 U.S. 626, 628-30 (1962) (holding that courts may dismiss an action for want of prosecution).

IT IS THEREFORE ORDERED that **on or before September 22, 2023** Plaintiff shall file a response to this Order showing cause why this case should not be dismissed as to Defendant Harrison for failure to prosecute. Plaintiff is hereby notified that failure to do so may result in dismissal of this case as to Defendant Harrison without further notice.

IT IS SO ORDERED.

  
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KEVIN R. SWEAZEA  
UNITED STATES MAGISTRATE JUDGE